IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13982 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHCHANDRA JIVANLAL VAIDYA

Versus

GUJ HOUSING BOARD

Appearance:

1. Special Civil Application No. 13982 of 1993

MR RM RUPAREL for Petitioner No. 1-5

MR HS MUNSHAW for Respondent No. 1

MR PRANAV G DESAI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 10/01/2005

ORAL JUDGEMENT

#. It appears from the record that this matter was

notified on board for final hearing on 18.3.2004. As nobody remained present on behalf of the petitioners, this Court adjourned the matter to 9.4.2004. On 9.4.2004 also, when the matter was called out twice, nobody remained present on behalf of the petitioners, and, therefore, the matter was adjourned to 16.4.2004. Now, today when the matter is called out twice, learned advocate appearing for the petitioners is absent. Under the circumstances, this Court has no other alternative, but to decide and dispose of this matter ex parte on merits, more particularly, in view of the fact that this petition is of 1993.

#. In this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for appropriate writ, order and direction directing respondent No.1 - Gujarat Housing Board not to make any construction over the land bearing Survey No.301/2. It is also further prayed to declare that Town Planning Scheme No.21 is illegal and respondent No.1 has no authority to construct or build shops, library, nursing home etc. Further prayer is also made for declaring that the said piece of land of Survey No.301/2 is for the common use of the petitioners and the members of other adjoining building.

#. In support of the petition and the averments made therein, the petitioners have produced one conveyance deed, by which, the petitioners are purchasers of the flats constructed by the Gujarat Housing Board. It is the case of the petitioners that certain portion of the land from the land bearing Survey No.301/2 is kept open and it is for the common use of the members of other adjoining building as well as the petitioners. It appears that respondent No.1 has started putting up construction of the shops and library on the aforesaid plot of land bearing Survey No.301/2. The present petition has been filed on the ground that the land in question has been sold to the petitioners and other persons and it is to be used only as common plot for the common use of the petitioners as well as for the members of other adjoining building.

#. Affidavit-in-reply is filed on behalf of respondent No.1 board. It is asserted in the affidavit-in-reply that the land in question, i.e. land bearing Survey No.301/2 on which construction is made for the purpose of library as well as shops belongs to the Gujarat Housing Board and is not sold to the petitioners or any other persons. It is submitted that construction of shops and library is already put up by the Housing Board. It is

further submitted that even in the residential area, certain commercial use such as bank, library etc. are permissible, and, therefore, the Gujarat Housing Board has rightly constructed shops and library.

#. Considering the fact that there is nothing on record to show that the land bearing Survey No.301/2 upon which the shops are constructed and the same is being used for the purpose of shops as well as library (on the second and third floor), the same is being sold to the petitioners. By considering the conveyance deed at Annexure-A to the petition, it cannot be said that the land bearing Survey No.301/2 (entire) has been sold to the petitioners or any other persons. Under the circumstances, the contention on behalf of the petitioners that the land in question is to be used for the benefit of the petitioners and members of other adjoining building as common plot and for common use cannot be accepted. The property belongs to the Gujarat Housing Board. Under the circumstances, if the Gujarat Housing Board has decided to put up construction of shops for the purpose of using the same as shops as well as library, it cannot be said that there is any illegality committed by the Gujarat Housing Board. Even otherwise, in view of the fact the petition is of 1993, there was no interim order passed by this Court and even when the affidavit-in-reply was filed in the year 1994 itself, it was stated that construction is already put up and it is the project worth Rs.14,89,910/- and the agency has already commenced the work which is now completed and the building is used for the purpose of shops (ground floor) and for library on the second floor.

#. For the reasons stated above, this petition is dismissed. Rule is discharged with no order as to costs.

(M.R.Shah,J)

(pathan)